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IN THE

Supreme Court of the United States

October Term, 1967

No. _____

KENNETH A. BURKE, dba RANCH ACRES LIQUORS; J. A. CHANDLER, JR., dba CHANDLER RETAIL LIQUORS; WILLIAM E. MANLEY dba TWENTY-FIRST & HARVARD LIQUOR STORE; JESSE B. RENICK dba PENNINGTON HILLS LIQUOR STORE; SARAH SIMPSON KEEL dba WAREHOUSE LIQUOR STORE; and C. J. WRIGHT, JR., dba WRIGHT'S BEVERAGE STORE,

Petitioners,

vs.

CLARENCE FORD and FRANK J. KUNC, dba ALL BRANDS SALES COMPANY; GEORGE S. FARHA and JOHNNY MONSOUR, dba CAPITOL BEVERAGE COMPANY; ZEAK NAIFEH and BOB NAIFEH, dba CENTRAL LIQUOR COMPANY; W. T. MILAM, dba FAMOUS BRANDS WHOLESALE LIQUOR CO.; GLEASON ROMANS, dba GLEASON ROMANS COMPANY; JOE R. JARBOE, dba JARBOE SALES COMPANY; KENNETH AMBROSE, III, dba LEADER LIQUOR COMPANY; TOM CONWELL, dba MIDWEST DISTRIBUTORS; KENNETH COOKSON, SR., dba PIONEER WHOLESALE LIQUOR DISTRIBUTORS; FARRIS P. SAFFA and GEORGE P. SAFFA, dba SAFFA BEVERAGE COMPANY; L. D. BRITTAIN, dba SOUTHWEST DISTRIBUTING COMPANY; ROSCOE THOMPSON, JERRY THOMPSON and PAT THOMPSON, dba THOMPSONS DISTRIBUT-

ING COMPANY; CARL AVERY, dba TOPS LIQUOR DISTRIBUTORS; H. D. GRIMSHAW, dba UNITED BEVERAGE CO., OKLAHOMA CITY; W. R. GRIMSHAW JR., dba UNITED BEVERAGE COMPANY; and K. E. NAIFEH, dba WESTERN DISTRIBUTING COMPANY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above case on May 15, 1967.

CITATIONS TO OPINIONS BELOW

The decision of the District Court for the Northern District of Oklahoma is not reported. The opinion of the Court of Appeals for the Tenth Circuit printed in the Appendix hereto is reported in 377 F. 2d 901.

JURISDICTION

The jurisdiction of this Court is invoked under 28 USC 1254(1).

QUESTION PRESENTED

Whether or not the jurisdictional element of interstate commerce within the meaning of Section 1 of the Sherman Act, 15 USC 1, was proved by petitioners.

STATEMENT

The petitioners, a group of Oklahoma liquor retailers, brought suit against Oklahoma liquor wholesalers to enjoin an alleged market division violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Trial Judge found that there had been a division of brands and territories; but, he held the evidence did not prove an unlawful conspiracy. He also held that the Sherman Act prerequisite involvement with interstate commerce was lacking.

Petitioners attacked the validity of the judgment as being contrary to the rule of law laid down by the United States Supreme Court in *Walling* v. *Jacksonville Paper Company*, 317 U.S. 564, and also *United States* v. *Frankfort Distilleries*, 324 U.S. 293, and contrary to the law of other circuits. *United States* v. *Chrysler Corporation Parts Wholesalers, Northwest Region, et al.*, 180 F. 2d 557; *United States* v. *South Florida Asphalt Co.*, 329 F. 2d 860; *Las Vegas Merchant Plumbing Ass'n* v. *United States*, 210 F. 2d 732.

REASONS FOR GRANTING THE WRIT

The judgment of the District Court as affirmed by the Court of Appeals for the Tenth Circuit is contrary to the rule of law laid down by the United States Supreme Court in the *Walling* case. As noted above, it is also contrary to the law of other circuits. By reason of this conflict and confusion, enforcement of the Sherman Act is more difficult, both for private litigants, as well as the Anti-Trust Division of the Department of Justice of the United States.

This conflict and confusion, should be clarified by the United States Supreme Court.

CONCLUSION

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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